

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GEORGE RAND RAUCH,

Petitioner,

V.

DAN PACHOLKE,

Respondent.

Case No. C07-5548RJB

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

This matter comes before the court on the petitioner's Notice of Appeal. Dkt. 24. The court has reviewed the relevant documents and the record herein.

PROCEDURAL HISTORY

On May 6, 2008, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, recommending that the petition for writ of habeas corpus be dismissed as unexhausted and procedurally barred. Dkt. 21. On June 6, 2008, the court adopted the Report and Recommendation, concluding that petitioner's claims were unexhausted and procedurally barred, and, in the alternative, reviewed the claims on the merits and concluded that the claims did not warrant habeas relief. Dkt. 23. Petitioner has now appealed to the U.S. Court of Appeals for the Ninth Circuit. Dkt. 24.

STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

The district court should grant an application for a Certificate of Appealability only if the petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on procedural grounds, the petitioner must show that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 120 S.Ct. at 1604.

DISCUSSION

13 This court first concluded that petitioner's claims were unexhausted and procedurally
14 barred. The claims were therefore dismissed on procedural grounds. There is nothing in the record
15 that would support a conclusion that jurists of reason would find it debatable whether these issues
16 state valid claims of the denial of a constitutional right and that jurists of reason would find it
17 debatable whether this court was correct in its procedural ruling.

In the alternative, the court carefully reviewed petitioner's claims on the merits. Petitioner has not shown that the Washington state court decisions upholding his conviction resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court; or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented to the state courts. Petitioner has not shown that reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.

The Certificate of Appealability should be denied.

Accordingly, it is hereby **ORDERED** that a Certificate of Appealability is **DENIED**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 18th day of June, 2008.

Robert J. Bryan
ROBERT J. BRYAN
United States District Judge